

## **REMARKS**

The Office Action (hereinafter referred to as "Office Action"), mailed November 18, 2005, considered and rejected claims 1-10, 12-15, and 18-20. Claims 1-10, 12-15, and 18-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Terheggen (U.S. Patent Application Publication No. 2002/0073079) in view of Leu (U.S. Patent No. 5,930,791). Claims 1, 14, and 18-19 were objected to because of informalities. By this action, claims 1-9, 12-14, and 18-19 have been amended, no claims have been cancelled, and two new claims 22-23 have been added. Accordingly, claims 1-10, 12-15, 18-20, and 22-23 remain pending for examination.

Reconsideration of the application is respectfully requested in view of the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action. Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references.

### **I. Claim Objections**

Independent claims 1, 14, and 18-19 were objected to because of informalities in section 3 of the Office Action. Applicants have amended claims 1, 14, and 18-19 to more distinctly point out the claimed subject matter as requested by the Office Action. Applicants accordingly believe that the objections have been overcome.

## **II. Claim Rejections under 35 U.S.C. § 103(a)**

In sections 4-5 of the Office Action, claims 1-10, 12-15, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terheggen in light of Leu. Accompanying this response is a Declaration under 37 C.F.R. 1.131 by Bruce R. Baird and John M. Zollinger ("Baird Declaration") including supporting documentation included as Exhibits A and B. Also accompanying this response is a Declaration under 37 C.F.R. 1.131 by Jeffery Barlow ("Barlow Declaration") including supporting documentation included as Exhibits A and B.

The Declarations establish that Bruce R. Baird and John M. Zollinger are the inventors of the invention claimed in the pending application (Serial No. 09/875,444) as amended. (Baird Declaration ¶ 1). The Declarations further establish that the invention of the pending application was conceived by Mr. Baird and Mr. Zollinger at least as early as March 27, 2000 and discussed at a lunch meeting at the Café Molise restaurant in Salt Lake City, Utah on that date. (Baird Declaration ¶ 2 and ¶ 3). The date of conception of at least as early as March 27, 2000 is corroborated by the note of the meeting created and signed by Jeffery Barlow on the same day as the lunch meeting, which was on March 27, 2000. (Barlow Declaration ¶ 1-4). A "Product Synopsis" document that summarizes the ideas of the invention was also created contemporaneously to the lunch meeting, further evidencing the date of conception. (Baird Declaration ¶ 3 and Barlow Declaration ¶ 5). The Declarations finally establish that Mr. Baird and Mr. Zollinger were diligent in reducing the invention to practice as evidenced by their filing of U.S. Provisional Patent Application No. 60/204,245 on May 15, 2000, approximately one and half months after the lunch meeting of the inventors. (Baird Declaration ¶ 5). Although the provisional application was unintentionally allowed to lapse, a non-provisional application was

filed less than two and half weeks after the lapse was discovered, and no public disclosure of the invention occurred prior thereto. (Baird Declaration ¶ 6-8)

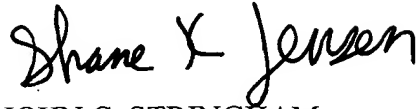
The date of conception of the invention embodied in the pending application was at least as early as March 27, 2000 as discussed above. The filing date of Terheggen is December 13, 2000, with an earlier priority date of April 4, 2000, while the filing date of the application under examination is June 6, 2001. Accordingly, Terheggen qualified as prior art only under 35 U.S.C. 102(e). The Applicants respectfully submit that based on the accompanying Declarations and accompanying documentation that the date of conception is established prior to April 4, 2000. Thus, the Terheggen reference no longer qualifies as prior art. Therefore, as the 35 U.S.C. 103(a) rejections depends on the validity of Terheggen as prior art, these rejections should be withdrawn.

By the above remarks, Applicants believe that they have addressed all of the issues raised in the Office Action and have put all of the pending claims in a condition of allowance. Applicants therefore respectfully ask that allowance of the pending claims be facilitated in a timely manner. Should there be any impediment to allowance of this case, which could be resolved by a telephone conversation, the Examiner is invited to contact the undersigned attorney of record.

Application No. 09/875,444  
Amendment "E" dated May 4, 2006  
Reply to Office Action mailed November 18, 2005

Dated this 4<sup>th</sup> day of May, 2006.

Respectfully submitted,

A handwritten signature in black ink that reads "Shane K. Jensen". The signature is written in a cursive, flowing style.

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